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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHRISTINE M.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E033424

(Super.Ct.No. J-177483)

OPINION

APPEAL from the Superior Court of San Bernardino County. A. Rex
Victor, Judge. Petition denied.

Howard, Friedman & Gebbie and Beth L. Steigerwalt for Petitioner.

No appearance for Respondent.

Alan K. Marks, County Counsel, and Phebe W. Chu, Deputy County
Counsel, for Real Party in Interest.

1. Introduction

In this petition for extraordinary writ,¹ Christine M. (mother) challenges the trial court's order setting the Welfare and Institutions Code section 366.26 hearing.² Mother argues that substantial evidence did not support the court's findings that the return of her child, Elizabeth S. (child), to her custody would create a substantial risk of detriment to the child's well being. We conclude that substantial evidence supported the court's findings and, accordingly, we deny mother's petition.

2. Factual and Procedural History

Child, who was born in March of 1999, was the subject of a prior dependency case. After the San Bernardino County Department of Children's Services (DCS) removed child in September of 1999, DCS returned child to parents in July of 2000, after parents successfully completed their family reunification plan. The court dismissed the case in June of 2001.

On August 9, 2001, DCS again intervened in response to a police request during a domestic dispute. The police noticed that mother was drunk and belligerent and father was under the influence of a controlled substance. Based on mother's violent actions and comments, including her statement that she hoped

¹ California Rules of Court, rule 39.1B.

² All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

that father and her child burned in hell, the police detained mother under section 5150. Both parents have been diagnosed with bi-polar disorder.

DCS filed a dependency petition under section 300 alleging that both parents had a history of substance abuse and mental health problems that prevented them from providing child with adequate care.³ DCS also alleged that mother had been institutionalized and was unable to arrange for her child's care.⁴ Based on a prima facie case supporting the allegations, the juvenile court detained child and ordered reunification services. DCS placed child in the home of her paternal aunt.

At the joint jurisdictional and dispositional hearing on September 14, 2001, the juvenile court found the allegations true, declared child to be a dependent child of the court, approved the recommended reunification plan, and continued child's placement out of the home.

Based on mother's progress in her reunification plan and her strong bond with her daughter, the social worker recommended that child be returned to mother under a family maintenance program. At the review hearing on March 14, 2002, the court followed the social worker's recommendations and returned child to mother's custody.

³ Section 300, subdivision (b).

⁴ Section 300, subdivision (g).

Mother and child lived at the Unity Home Domestic Violence shelter. In September of 2002, a Unity Home staff member contacted the social worker and informed her that the staff was concerned about mother's drinking and her ability to provide child with a safe home environment. At about the same time, mother also began serving a 30-day jail term for traffic violations. Mother made arrangements to have Marjorie L. care for child during her incarceration. Based on these new developments, the social worker changed her recommendation from terminating the dependency to continuing child's placement under DCS supervision. The court continued child's placement with mother.

On November 4, 2002, the social worker received information that the day before mother had called 911 and threatened to commit suicide. The social worker also discovered that, at the time, mother had been drinking and had not been stable on her psychotropic medications. Apparently, during mother's 30-day period of incarceration, the psychiatrist at the detention facility changed her medication. But the detention facility personnel refused to dispense the same medication upon her release on November 1, 2002. Mother arranged for Marjorie L. to care for child while she attempted to stabilize on her medications. Mother visited her psychiatrist on November 14, 2002. After the appointment, mother overdosed on her medication and was taken to the hospital. Later, mother was admitted to a charter hospital under section 5150.

On November 20, 2002, DCS filed a supplemental petition under section 387 requesting that the court remove child from mother's custody. DCS alleged that mother was unable to provide adequate care because of her mental illness and substance abuse. DCS also alleged that mother was hospitalized for being a danger to herself and others.

At the detention hearing on the supplemental petition, the juvenile court removed child from mother's custody and ordered family reunification services. The court placed child with Marjorie L. At the jurisdictional and dispositional hearing, the court found the allegations in the supplemental petition true. The court also adopted the social worker's recommended findings, including that the return of child into mother's custody would create a substantial danger to child's well-being, and that DCS made reasonable efforts to prevent the removal of child from her parents. The court ordered visitation for mother. The court also set the section 366.26 hearing.

3. Substantial Risk of Detriment

Mother claims that insufficient evidence supported the court's findings that child's removal was necessary and a substantial risk of detriment existed.

When a child is removed from parental custody under a supplemental petition, the court must determine by clear and convincing evidence that there is substantial danger to the child's well being and there are no reasonable means to

protect the child without removal.⁵ When a court makes these findings, a reviewing court is limited to evaluating the court's order to determine whether substantial evidence supports the court's findings.⁶

In this case, substantial evidence supported the court's findings. Despite mother's resourcefulness and diligence in finding care and services, mother's past and present encounters with DCS demonstrated that mother is likely to revert to engaging in destructive behavior, including attempting suicide and abusing drugs and alcohol.

The court repeatedly gave mother the opportunity to care for child, but mother failed to stabilize her mental illness and secure a safe home environment. After the court dismissed the first dependency case in June of 2001, DCS intervened again two months later when both parents were engaged in domestic violence and were under the influence of drugs or alcohol. More recently, when the court placed child in mother's custody in March of 2002, the court again removed child in November of the same year. At that time, mother was not stable on her medication, was drinking alcohol, and had threatened to commit suicide.

Although this behavior may have been caused, in part, by the change in her medication, mother still failed to comply with her plan and placed her child in

⁵ *In re Paul E.* (1995) 39 Cal.App.4th 996, 1000-1001.

⁶ *In re Stephanie M.* (1994) 7 Cal.4th 294, 318; *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.

danger. The staff at the residential facility where mother lived reported that mother continued to drink alcohol while child was in her custody. Mother admitted that she drank in child's presence. Even after receiving psychiatric care, mother attempted to overdose on her medication and was hospitalized under section 5150. On at least two other occasions during DCS's involvement, mother was hospitalized under section 5150 for endangering herself and others.

Mother's mental illness and her substance abuse subjected child to a substantial risk of danger.⁷ At one point, mother admitted that she felt unsure if she could successfully parent her child. The social worker commented that mother was unable to maintain a consistent level of functioning required to provide child with adequate care. The social worker did not question mother's ability to control her mental illness for brief periods of time. Instead, the social worker questioned whether any services offered to mother would suffice to ensure long-term relapse prevention.

Since her birth in 1999, child has been in the dependency system for most of her life. The social worker's report indicates that, although there is a strong bond between mother and child, child has suffered as a result of being deprived of a stable and permanent home.

⁷ Compare *Linda B. v. Superior Court* (2001) 92 Cal.App.4th 150, 154-155 with *Kimberly R. v. Superior Court, supra*, 96 Cal.App.4th at pages 1078-1079.

We conclude that substantial evidence supports the juvenile court's findings that mother's mental illness and substance abuse placed child at risk of serious danger. Furthermore, based on the evidence that reunification services have failed to prevent relapse, the court properly found that removal from parental custody was necessary to ensure child's safety and protection.

4. Disposition

We deny mother's petition.

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s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/King
J.